

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JON A. REEDER**

Claimant

VS.

**IBP, INC.**

Respondent

Self-Insured

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Docket No. 138,092

**ORDER**

Respondent appealed an Award dated November 19, 1996, entered by Special Administrative Law Judge William F. Morrissey. Jeff K. Cooper has been appointed Board Member Pro Tem for this case to serve in place of Gary M. Korte who has removed himself from this proceeding.

**APPEARANCES**

The claimant appeared by and through his attorney, John M. Ostrowski. The respondent, self-insured, appeared by and through its attorneys, Paul K. Thoma and Tina M. Sabag. There were no other appearances.

**RECORD AND STIPULATIONS**

The Appeals Board considered the record and adopted the stipulations listed in the Award.

**ISSUES**

The issues raised by the respondent are whether or not claimant's injury arose out of and in the course of his employment, nature and extent of disability, vocational rehabilitation, and future medical.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

The claimant worked for respondent from July 3, 1989, through July 10, 1989. Prior to commencing work for the respondent, claimant underwent and passed a preemployment physical. During the first 2½ days of his employment with respondent, the claimant participated in training activities. Following the training program, the claimant worked in production for approximately 4 days. Approximately 1½ days of that time was spent operating the wizard knife and the remaining days packaging meat weighing 40 to 75 pounds. Claimant reported an injury occurring on July 8, 1989, to his supervisors and testified that the work caused pain and swelling in his hands and wrists following 3 days of production work. After requesting medical treatment and not being provided treatment, the claimant testified he left the plant at lunch to obtain medical treatment. Although the respondent terminated the claimant for leaving work, respondent did provide medical treatment.

Treatment was provided by Dr. Edward Campbell and Dr. H. Russell Bradley and claimant was ultimately referred to Lynn D. Ketchum, M.D., for treatment. Dr. Ketchum, who provided treatment from September of 1989 through December of 1989, testified that claimant had synovitis and lateral epicondylitis on his left upper extremity. Dr. Ketchum opined that claimant had a 7.5 percent impairment to the left wrist. Dr. Ketchum also testified that the claimant had a predisposition to develop synovitis in the wrist, and that it was probable, based upon the history, that the work activities accelerated the onset of symptomatology.

Dr. Moore testified and his reports show a history of swelling of both wrists and forearms. Dr. Moore's notes also reflect that the claimant had multiple popping and cracking sensations in the wrist and elbows with motion. Dr. Moore testified that he did not believe the employment history of three days caused or significantly added to claimant's condition. Dr. Moore felt that the claimant was limited to light duty work of a clerical nature. Dr. Moore also testified that given the fact that the claimant had no symptomatology prior to working for the respondent, it would be more probable than not that the employment activities accelerated the onset of the symptomatology. Dr. Ketchum continued to treat the claimant through December of 1989, at which time he referred the claimant to John B. Moore, IV, M.D., for a second opinion.

Jay Stanley Jones, M.D., examined the claimant on April 7, 1994, at the request of claimant's attorney. Dr. Jones testified that claimant suffered from a chronic overuse syndrome and carpal tunnel syndrome. Dr. Jones testified that assuming the claimant had no history of prior problems to his wrists, and further assuming the nature of the activities at work for the respondent, it was more probably true than not that the work caused claimant's condition. Dr. Jones placed a 30-pound weight lifting limitation on the claimant and recommended avoidance of repetitive gripping and grasping and further avoidance of cold environments. Dr. Jones also testified that tenosynovitis normally occurs over a long period of time; however, the condition can occur over a short period of time, as well. The Appeals Board finds, based in significant part on Dr. Jones' testimony, claimant's work did cause additional permanent injury.

Mr. Dick Santner was utilized by the claimant as a vocational expert concerning the claimant's loss of access to the open labor market and loss of ability to earn comparable wage. Mr. Santner testified that based upon the restrictions from Dr. Jones and Dr. Moore, claimant had a 99 percent loss of access to the open labor market. Mr. Santner also testified that the claimant had a loss of wage earning capacity between 23 percent and 35 percent.

The respondent obtained vocational expert testimony from Mr. Michael Ahlers, who opined that based upon Dr. Jones' restrictions the claimant had a 99 percent loss of access to the open labor market, and based upon Dr. Moore's restrictions claimant had a 62 percent loss of access to the open labor market. Mr. Ahlers also testified that claimant had between a 0 percent and 9 percent loss of ability to earn a comparable wage.

After carefully considering all the evidence in the file, the Board agrees with the finding of Special Administrative Law Judge William F. Morrissey that claimant's permanent impairment probably or most likely arose out of and in the course of his employment. The phrase "arising out of" claimant's employment requires a causal connection between the injuries and the nature, conditions, obligations, and incidents of employment. Craig v. Electrolux Corporation, 212 Kan. 75, 510 P.2d 138 (1973). Given the fact in this case that the preemployment physical given to the claimant prior to his work for the respondent did not discover any problems with claimant's wrists, coupled with claimant's testimony that he had never had a problem with his wrists before, and the medical testimony from the various physicians, leads to the conclusion that the work the claimant did for the respondent either caused the condition or aggravated or accelerated some preexisting condition resulting in permanent impairment.

The Appeals Board finds that work disability is appropriate. The Board finds no compelling reason to adopt one of the vocational expert opinions over the other and, after averaging the task loss defined by the experts, finds an 80.5 percent loss of ability to perform work in the open labor market. An average of the opinions regarding loss of wage-earning capability results in a loss of ability to earn comparable wage of 16.75 percent. Giving equal weight to both factors results in an overall work disability of 49 percent.

It should be noted claimant was incarcerated for a period after his injury. The record does not contain precise information about the initial date of incarceration but the best evidence, found in the January 19, 1995, deposition of claimant, indicates claimant was first incarcerated January 14, 1991, and was released July 7, 1994. Claimant was, therefore, removed from the open labor market and would, therefore, not be entitled to work disability during those weeks. Foulk v. Colonial Terrace, 20 Kan. App.2d 277, 887 P.2d 140 (1994), *rev. denied* 257 Kan. 1091 (1995).

Further, based upon the evidence in the record, the Board finds that the claimant is entitled to an order for a vocational rehabilitation assessment pursuant to K.S.A. 1989 Supp. 44-510g.

### **AWARD**

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the decision of Special Administrative Law Judge William F. Morrissey, dated November 19, 1996, should be, and the same is hereby, modified as follows:

The claimant, Jon A. Reeder, is entitled to compensation for an accidental injury arising out of and in the course of his employment on or about July 8, 1989, and based on an average weekly wage of \$246.54, for 34 weeks of temporary total disability compensation at the rate of \$164.37 per week or \$5,588.58. Thereafter, claimant is entitled to a 49% permanent partial general disability at the rate of \$80.54 per week for the 45.14 week period from March 4, 1990, through January 13, 1991, in the sum of \$3,635.58, and for the 180.14 week period from January 8, 1994, through June 21, 1997, in the sum of \$14,508.48. Claimant is also entitled to 155.71 weeks at the rate of \$13.15 per week or \$2,047.59 for an 8% functional impairment for the period from January 14, 1991, through January 7, 1994, the period claimant was incarcerated. The total award of \$25,780.23 is due and owing and ordered paid in one lump sum less compensation previously paid.

Future medical benefits will be awarded only upon proper application to and approval of the Director. Unauthorized medical expense of up to \$350.00 is hereby ordered paid to or on behalf of the claimant upon presentation of proof of such expense.

Claimant's attorney fee contract is hereby approved insofar as not inconsistent with K.S.A. 44-536.

Pursuant to K.S.A. 44-510g, claimant is ordered referred for a vocational rehabilitation referral.

Fees necessary to defray the expense of the administration of the Workers Compensation Act are hereby assessed against the respondent as follows:

William F. Morrissey, Special Administrative Law Judge	\$150.00
Curtis, Schloetzer, Hedberg, Foster & Associates	
Transcript of Preliminary Hearing	\$ 71.20
Transcript of Motion Hearing	\$ 61.45
Appino & Biggs Reporting Service	
Transcript of Motion Hearing	\$177.30

Deposition of Jon Reeder	Unknown
Deposition of Dick Santner	\$171.20
Hostetler & Associates	
Transcript of Preliminary Hearing	\$152.45
Don K. Smith & Associates	
Deposition of Jon Reeder	Unknown
Deposition of Jay Stanley Jones, M.D.	\$305.00
Correll Reporting Service	
Transcript of Regular Hearing	\$111.03
Metropolitan Court Reporters	
Deposition of John B. Moore, IV, M.D.	\$145.10
Deposition of Lynn D. Ketchum, M.D.	\$121.60
Forbes Reporting Service	
Deposition of Doug Crockett	\$ 60.80
Deposition of Rodger Brownrigg	Unknown
Owens, Brake, Cowan & Associates	
Deposition of Michael Ahlers	\$191.68

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 1997.

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BOARD MEMBER PRO TEM

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BOARD MEMBER

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BOARD MEMBER

c: John M. Ostrowski, Topeka, KS  
Tina M. Sabag, Dakota City, NE  
Floyd V. Palmer, Administrative Law Judge  
Philip S. Harness, Director